

CHAPTER FIVE

GAPS, OVERLAPS AND INTERAGENCY COORDINATION

The following gaps, overlaps and opportunities for improved interagency coordination were identified in agency survey responses and through research of legislation, regulations and other reference materials.

POINT SOURCES OF POLLUTION

Gaps

- o Discharge permitting standards are based only on regulated constituent concentrations in the effluent. As a result, the impact of unregulated toxics and other constituents are not addressed through the permitting process. Additionally, there is no consideration of the other potential impacts of increased overall discharge volumes on a tidally-influenced aquatic habitat such as Christmas Bay.
- o Lack of a formal environmental policy for the Texas Water Commission (TWC). An agency-wide environmental policy would help to strengthen TWC's expanding role in protecting the State's environment. One objective of such a policy could be to set forth a more comprehensive evaluation of the environmental impacts of wastewater discharges during the permit application process.
- o Lack of a cumulative assessment of the impact of existing and new wastewater discharges in the permit review process. EPA and TWC do not provide other reviewing agencies with data on the cumulative contributions of existing discharges to the watershed.
- o Oil and gas-related discharges are not regulated for all potential toxics. The Texas Railroad Commission (RRC) regulates wastewater discharges associated with oil and gas drilling activity. However, oil and grease are the only pollutants from these discharges which are regulated. Other pollutants with the potential to degrade the Christmas Bay environment, such as Total Suspended Solids and brines, are not regulated by the RRC.
- o Comprehensive monitoring and enforcement to prevent illegal discharges outside of municipalities is difficult to achieve. The majority of streams and bayous in the Christmas Bay watershed are in unincorporated areas. This leaves Brazoria County with the primary enforcement responsibility to prevent illegal discharges, but it has limited personnel to patrol such a large area.

Overlaps and Interagency Coordination

- o EPA and TWC currently overlap in permitting authority for municipal and industrial discharges. Permits are currently required from both agencies, though delegation of

permitting authority to the TWC under the National Pollutant Discharge Elimination System (NPDES) is pending. While there is a duplication of effort in dual permitting there is some division of opinion as to whether this overlap is indeed a management problem. There are concerns that eliminating EPA's direct involvement in the process will leave uncertainty as to how determinations to require an Environmental Impact Statement will be made in the permitting process.

- o **Enforcement agencies could benefit from additional coordination.** Federal, state and local authorities all have some level of enforcement authority over point source discharges, however, there is currently no plan or policy to coordinate enforcement efforts by the various agencies involved. While enforcement by multiple autonomous agencies is a necessary part of a system of checks and balances, a coordination system could help to maximize the limited resources available.
- o **There is a lack of coordination between state and local government in planning the development or expansion of wastewater treatment facilities.** Local governments and municipal utility districts plan wastewater treatment facilities to meet their own needs. Environmental management objectives downstream are not necessarily a consideration. As a result, state/local interaction on facility development and expansion issues is dealt with at the permitting stage, after considerable planning has been conducted by the local government.

Closer coordination in watershed management would make local governments more aware of state management objectives and allow for mutually satisfactory solutions to be reached earlier in the facility planning process. Mitigation strategies may also be less expensive and more effective if developed in early project planning stages.

NONPOINT SOURCES OF POLLUTION

Gaps

- o **There are no regulations currently in place to manage nonpoint source water pollution from urban runoff.** EPA and TWC currently have the legislative authority to require local governments to implement nonpoint source water pollution management practices, although the regulations are not presently in place. The forthcoming EPA NPDES permit requirements for stormwater discharges, now expected to be issued in mid-November, will essentially require local governments to develop nonpoint source management plans. However, many questions about the permitting process remain, such as municipal versus watershed-wide permits, local government's financial capability for compliance, and EPA's resources for administering and enforcing a new program of this scale.

When promulgated, the TWC's pollution control and abatement program regulations will also require local governments to implement management practices to limit nonpoint source pollution. These rules are presently in the discussion stage and are not likely to

be adopted before February or March 1991. Questions also remain about this program's cost to local governments and the resulting administrative burden on TWC.

- o **Local governments in the Christmas Bay watershed do not have a regulatory framework in place to manage nonpoint source water pollution.** Future federal and state requirements notwithstanding, none of the local governments presently have a comprehensive nonpoint source management program in place. Establishment of such programs will require additional regulation of hazardous waste in the stormwater system, costly monitoring and possibly structural controls. If Brazoria County becomes the NPDES stormwater permit holder, as is likely, it still will have only limited regulatory authority given the role of counties under Texas law.
- o **Preventing illegal discharge of pollutants into the storm sewer system is difficult, particularly at the household level.** Local governments and the County do investigate for illicit discharges. However, resources are limited for preventing non-structural discharges and the disposal of household hazardous waste via the stormwater system. Owing to the increasing expense of disposing of hazardous materials and the concentration of industrial and medical facilities in the region, the potential exists for illegal disposal of toxic which may present public health risks.
- o **There is currently no local regulation of erosion from construction projects.** Though local erosion control plans will be a requirement of the TWC pollution control and abatement program, the regulatory framework is not presently in place at the local government level. Even after the TWC's new rules are implemented, much of the Christmas Bay watershed may still be vulnerable to erosion impacts since the TWC program will only apply to the Cities of Angleton and Lake Jackson. Communities with populations under 5,000 are exempt, as are unincorporated areas, where the County has only limited regulatory authority. While erosion controls could be extended to cover the extraterritorial jurisdiction of municipalities, this measure would not be required under the proposed TWC regulations. At the same time, there is still some debate about the actual contribution of pollutants from, construction-related sediments, the cost-effectiveness of requiring such a program, and its impacts on the construction industry.
- o **There is no specific regulation of nonpoint source pollution from agricultural activities, other than feedlots.** The Soil Conservation Service sponsors voluntary programs which assist farmers in addressing nonpoint source pollution from erosion. However, there is no direct regulatory framework to prevent contamination of surface water or groundwater from broadcast chemicals such as pesticides and fertilizers. An additional concern is possible contamination and increased water flow from irrigation-related drainage.
- o **The design orientation of local storm sewer systems is generally geared toward flood control, not pollution abatement.** As a result, planned storm drainage projects may contribute to significant degradation of water quality since the systems are not presently regulated for their water quality impacts.

- o **Not all activities which cause nonpoint source groundwater contamination are directly regulated.** For example, certain land uses may be inappropriate for groundwater recharge zones, yet current land use policy may not reflect this. the TWC and Texas department of health (TDH) currently have a voluntary program for the protection of municipal water wells. There is a current effort underway by the TWC to enlist communities in this program. However, none of the local governments in the watershed are now participating in this program
- o **Water pollution threats may exist from landfill sites which are already closed or from unauthorized dump sites.** While today's regulations governing landfill design and post-closure maintenance have extensive provisions for groundwater protection, some older closed landfills or unpermitted sites may, at some point, pose a threat to groundwater.
- o **Recreational cabins on Bastrop Bay do not have sanitary facilities, and the Texas General Land Office has limited ability to police waste disposal at these sites.** The cumulative impacts of waste disposal from these cabins is not known, but it may have a negative impact on Christmas Bay. The GLO is currently developing a program to require cabin occupants to dispose of their wastes properly. However, there are no existing enforcement programs.

Opportunities

- o **There appear to be opportunities for local land use and development/construction ordinances to be used in NPS management.** Examples include erosion control on construction projects and land use controls aimed at preventing contamination in well recharge zones.

NATURAL AND LIVING RESOURCE MANAGEMENT

Gaps - Wetlands

- o **The Section 404 program only covers dredge and fill disposal projects.** Other alterations to the wetlands environment, such as draining and clearing, are not regulated under the Clean Water Act, but through various other regulations and inter-agency agreements.
- o **Many minor dredge and fill disposal projects are authorized under general or nationwide permits without individual review.** As a result, the cumulative impact of numerous small projects is unknown.
- o **Section 404 permit reviews do not fully evaluate environmental impacts.** Of particular concern is the lack of adequate assessments of the impacts of dredge and fill disposal projects on non-game, non-endangered or threatened species and habitat.
- o **There is no comprehensive inventory or monitoring of the extent of wetlands in the**

Christmas Bay watershed. Owing to the level of analysis required, wetlands determinations are made only upon request on a case-by-case basis.

- o Enforcement of violations of Section 404 has been limited.** It is particularly difficult to monitor and enforce violations on small projects.
- o Management of small parcels exchanged for filled wetlands is difficult.** Land exchange is an accepted mitigation technique in the permitting process. However, it is difficult and costly to manage numerous small parcels.

Overlaps and Coordination - Wetlands

- o Final authority in enforcing wetlands legislation is unclear.** Permitting and enforcement of the section 404 program is jointly handled by the Corps of Engineers and the Environmental Protection Agency under a Memorandum of Agreement. However, as written, it appears as though each agency has the authority to overrule the other, based on economic or environmental concerns.
- o Concerns exist about the effectiveness of a multi-agency review process.** Under the Fish and Wildlife Coordination Act, other federal agencies such as the Fish and Wildlife Service review permits for associated environmental impact. However, permits have been issued in spite of concerns expressed by reviewing agencies.

At the state level, TWC and the Texas Parks and Wildlife Department also certify section 404 permits. However, these agencies currently conduct their review outside the context of a state coastal zone management plan.

- o No formal guidance has been given to regulatory agencies for implementing the President's stated "no-net-loss" policy.** "No-net-loss" of wetlands is a stated national objective. However, there is no formal guidance to the agencies involved with permitting and reviewing as to the interpretation of this policy on a case-by-case basis.

Gaps - General

- o There is generally insufficient monitoring of living resources in the watershed.** There are gaps in the monitoring of shellfish or finfish movements and in monitoring non-game and non-endangered or non-threatened species.
- o There is a general lack of funding for enforcement of natural resource protection regulations.** The Texas General Land Office (GLO), for example, currently has a field staff of 3 to cover 4.5 million acres of submerged lands under its jurisdiction.
- o Wildlife and habitat protection regulations generally only cover endangered, threatened, game or commercially valuable species.** Christmas Bay is an important habitat for

migratory birds and fish, and it contains the most significant remaining stand of sea grasses within the Galveston Bay system. These living resources are important to many residents in the surrounding region. Aside from the Coastal Preserves Program, there are limited tools to ensure against significant alterations of Christmas Bay and its watershed.

- o **Nursery habitat provisions cover only commercial fisheries.** Areas of the Bay could be valuable habitat for non-game species which are not protected by the current designation.
- o **Texas lacks a comprehensive coastal zone management program.** Texas is one of two coastal states which does not currently participate in the federal coastal zone management program. As a result, agencies such as the TWC and Texas Parks and Wildlife Department (TPWD) review and certify Section 404 permits outside the context of an overall plan.

The Texas General Land Office (GLO) is currently developing a Coastal Management Plan along with TPWD and other agencies. However, no funds for this plan have been appropriated by the Texas Legislature.

- o **Land use regulations adopted by local governments do not specifically address the potential impacts of development on the Christmas Bay watershed.** Though land use is regulated in Angleton, Lake Jackson and Richwood, there are no specific local provisions which address the impacts of development on natural resources.

Overlaps and Coordination-General

- o **Coordination of programs often suffers from differing orientations of participating agencies.** At the federal level, the Corps of Engineers has a development orientation, whereas the EPA and FWS are conservation-oriented. At the state level, the GLO has a revenue-generating orientation which may not always be consistent with the conservation objectives of the TPWD. Additional coordination and development of consensus environmental objectives would make administration of regulations more effective, particularly in cases of joint administration and multi-agency reviews of permits.

PUBLIC HEALTH

Gaps

- o **Closure criteria for shellfish beds (oysters) are based on general weather patterns and not on monitored water quality or other individual case evaluations.** Closures are based on a set number of consecutive days of rainfall over a certain amount for the entire state. Variations of different waterbodies are not taken into account.